

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,	)	
	)	The Honorable Liam O’Grady
Plaintiff,	)	
	)	Case No. 1:12-cr-00003-LO
v.	)	
	)	
KIM DOTCOM, <i>et al.</i>	)	
	)	
Defendants.	)	

**RESPONSE OF KYLE GOODWIN TO THE COURT’S ORDER OF OCTOBER 29, 2015**

Non-Party Kyle Goodwin hereby responds to the questions posed by the Court in its October 29, 2015 Order (ECF No. 229). Mr. Goodwin maintains his request that the Court create a process for the return of his valuable data, currently stored on the servers in the possession of QTS Realty Trust, Inc. (QTS). Mr. Goodwin lost access to his data as a direct result of the Government’s seizure of the servers in January 2012.

**Response to Question 2**

Based on available information, Mr. Goodwin believes that most or all of the data stored on the servers in possession of QTS is recoverable. According to a 2013 study by the online backup company Backblaze, for “consumer-grade” hard drives in continuous operation in a commercial data center, 22% of drives can be expected to need replacement after 4 years. Backblaze, “How long do disk drives last?” (Nov. 12, 2013), *available at* <https://www.backblaze.com/blog/how-long-do-disk-drives-last/>. The study also found that such drives have a very low failure rate, below 5%, during their first three years of use. *Id.*

According to representations made by counsel for Carpathia Hosting, the predecessor to QTS, at the April 13, 2012 hearing, the hard drives at issue here were powered down and stored

in a “climate controlled data center.” Transcript of Hearing on Motions, ECF No. 218-3, at 7. As the drives are not in active use, they are subject to less wear than the continuously running drives in the Backblaze study. In addition, the QTS drives are likely to be of higher quality manufacture than the “consumer-grade” drives used by Backblaze.

The degree of “climate control” to which the QTS drives have been subjected is unlikely to affect the recoverability of the data. A study by engineers at Google found that temperature did not strongly affect the rate of drive failures. Eduardo Pinheiro, Wolf-Dietrich Weber, and Luiz André Barroso, “Failure Trends in a Large Disk Drive Population,” *Proceedings of the 5th USENIX Conference on File and Storage Technologies* (February 2007), at 5-6, available at [https://static.googleusercontent.com/media/research.google.com/en//archive/disk\\_failures.pdf](https://static.googleusercontent.com/media/research.google.com/en//archive/disk_failures.pdf).

#### **Response to Question 8**

Retrieving data belonging to users who request its return will not require restoring the servers to full functionality. If, as the Motion Picture Association of America contends, a significant amount of the data on the servers consists of infringing copies of MPAA members’ motion pictures, then the amount of data to be retrieved from the servers and returned to innocent users like Mr. Goodwin is far less than the total capacity of the servers. Such return will therefore cost far less than would a complete restoration of the servers. Moreover, access would only need to be provided for a finite length of time. Therefore, Mr. Goodwin believes the cost of returning data to innocent users is reasonable in proportion to the value of that data.

#### **Response to Question 9**

To the extent that Megaupload users provided email addresses when using the system, and to the extent such data has been preserved, the parties can notify users via email that they can request access to their data. If email addresses are not available, notification can be made

publicly through the mechanisms commonly used for class actions, tailored appropriately for a population of Internet users. For example, a notice distributed through newspapers and news websites that cover Internet business are likely to reach many former Megaupload users who, like Mr. Goodwin, lost access to valuable, lawful data.

Dated: November 12, 2015

Respectfully submitted,

/s/ John S. Davis

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 12, 2015, the foregoing was filed and served electronically by the Court's CM/ECF system upon all registered users, upon all counsel of record.

Dated: November 12, 2015

/s/ John S. Davis

John S. Davis